

that if it is to be subject to testing then the testing should be structured to allow TI to have reasonable expectations on the amount of delay and expense to anticipate for testing for each new project. Moreover, TI believes that it is better to have full participation on the front end by Part 15 users and manufacturers in designing the testing that to allow them the ability to come in after the fact of deployment of a nonmultilateration systems and claim that TI failed to properly test for a particular Part 15 device. To this end, TI would support allowing companies to design uniform testing plans and obtaining approval of those plans with public comment and input from the Office of Engineering and Technology rather than requiring individualized area by area testing plans. However, to the extent that establishing these guidelines will require additional rulemaking proceedings, adjustments to both grandfathering and type-acceptance deadlines will have to be made to protect ongoing utilization of these nonmultilateration systems and a continuing market.

IV. THE COMMISSION SHOULD DECLINE TO ALTER THE BANDWIDTH ALLOCATION PLAN TO FURTHER RESTRICT BANDWIDTH MADE AVAILABLE TO NONMULTILATERATION SYSTEMS.

TI opposes the implication of SWBM that the 2 MHz shared bandwidth should be earmarked for exclusive multilateration use.⁴⁸ The issue of bandwidth allocation has been presented numerous times during the past two years. SWBM asserts no new factual argument or change in circumstances meeting the standards for reconsideration. Having failed to satisfy the criteria for reconsideration, SWBM's request should be denied. TI would adopt the reasoning in Amtech's Petition seeking an additional 2 MHz bandwidth as

⁴⁸ SWBM Petition, p. 4.

reasoning for not altering the current bandwidth allocation plan.⁴⁹ Further, TI would object to the extent that any party would have nonmultilateration systems license in 2 mHz blocks for a particular market as suggested by SWBM for multilateration systems.⁵⁰

V. TI ENCOURAGES THE COMMISSION TO ADOPT TI'S FREQUENCY TOLERANCE PROPOSAL OVER AMTECH'S PROPOSAL OR IN COMBINATION WITH AMTECH'S PROPOSAL.

TI agrees with Teletrac and Amtech that the frequency tolerance limit of .00025% should be relaxed,⁵¹ TI disagrees with the proposal of Amtech that the FTL should remain .00025% if the system has a center frequency located at distance greater than 40 kHz of the center of the authorized bandwidth and +/- 40 kHz if within this distance from the center point.⁵² As TI indicated in its Request for Clarification and Limited Reconsideration, the measure should be of a magnitude closer to 50 parts per million. However, TI would have no objection to adopting a 50 ppm requirement if the center frequency is located greater than 40 kHz of the center of the authorized bandwidth--a combination of TI and Amtech's proposals.

VI. GIVEN THE BREADTH OF COMMENT AND DIVERSITY OF OPINION OVER GRANDFATHERING, THE COMMISSION SHOULD RECONSIDER WHETHER THE GRANDFATHERING PROVISIONS SHOULD BE MODIFIED.

The point of grandfathering systems is so that expenditures made prior to and during this rulemaking proceeding will not become lost investments by the public and governmental agencies. What the Commission has done regarding

⁴⁹ See Petition for Partial Clarification and Reconsideration filed by Amtech Corporation, p. 17-18 ("Amtech Petition").

⁵⁰ SWBM Petition, p. 5.

⁵¹ Teletrac Petition, p. 3, n. 6; Amtech Petition, p. 14.

⁵² Amtech Petition, p. 14.

grandfathering of nonmultilateration systems is grandfathered all systems licensed on or before February 3, 1995, in the 902-904 and 909.75-921.75 bandwidths from all requirements of the final rules.⁵³ For those nonmultilateration systems licensed prior to February 3, 1995, in bandwidth now reserved for multilateration technology, the systems are grandfathered from the final rules--including frequency tolerance, emission mask, and ERP requirements--except for those limitations in 90.353 regarding permissible use and the frequency must be modified to a nonmultilateration frequency by April 1, 1998, certifying that the system was constructed and operational as of February 3, 1995--phased in compliance. There is no definition of "constructed and operational" for nonmultilateration systems. Those systems licensed after February 3, 1995, have eight months to be placed in operation.⁵⁴ Additionally all transmitters imported and marketed after April 1, 1996 must receive type acceptance.⁵⁵

The parties have been particularly inarticulate in discussing their desires regarding grandfathering and whether their requests are limited to multilateration systems or encompasses all LMS systems. To the extent that a proponent's request could be read as seeking modification of the grandfather provisions for nonmultilateration systems and/or to the extent that the Commission would adopt the request of MI/SCE to apply Rule 90.361 to nonmultilateration systems, TI opposes the following requests: (i) that currently incompatible uses should not be grandfathered;⁵⁶ (ii) that grandfathering should

⁵³ Ruling, p. 64, ¶ 90.363(a).

⁵⁴ Ruling, p. 56, ¶ 90.155(a).

⁵⁵ Ruling, p. 57, ¶ 90.203(b)(7).

⁵⁶ Connectivity Petition, p. 1.

be restricted to constructed systems;⁵⁷ and (iii) that grandfathered systems should have to show no interference with Part 15 devices and be subject to the same presumption.⁵⁸

The requests in items (i) and (iii) are merely different reflections from the same mirror. Part 15 users want to eviscerate the purpose of grandfathering provisions for LMS systems by circumventing the historical relegation of Part 15 devices to secondary use status. If currently incompatible uses are grandfathered, then it is incumbent upon the Part 15 user to modify or cease its operations. It would be unjust to require that grandfathered systems--built as primary systems--now be subject to new rules giving Part 15 devices greater leeway to avoid accommodating the grandfathered system when resolving interference or ceasing operation. These systems were built with the expectation that the burden would be on Part 15 users to resolve any harmful interference and be subject to interference from the grandfathered nonmultilateration system.

The Part 15 users undertook to deploy their devices in an interfering way with the understanding that, as the rules stood, they would be required to make the modifications. Now, without justification, Part 15 users seek to reverse this obligation. Under the new rules, an existing constructed and operational system that tests in a manner that causes unacceptable interference to a Part 15 device would have to be modified, a wholly unanticipated result for those governmental agencies who have set up tollway systems. Now they would find themselves unable to reap the benefits of the system unless and until they secured new

⁵⁷ Cellnet Petition, p. 13-14.

⁵⁸ Cellnet Petition, p. 6; MI/SCE Petition, p. 15; P15 Coalition Petition, p. 12.

monetary authorizations from their taxpayers to pay for modifications. By contrast, Part 15 devices would obtain a windfall.

As for restricting grandfathered systems to constructed systems, the rules already require this unless the system was licensed prior to February 3, 1995, and is already scheduled to reside in the bandwidths available under the new rules for nonmultilateration systems. Because the rules requiring construction within eight months of authorization, for nonmultilateration systems, we are discussing whether those systems authorized between October 3, 1994 and February 3, 1994 but not yet constructed should or should not be grandfathered.

As this proceeding continues, this class of potential grandfathered systems will continue to diminish as authorizations are forfeited. The question is whether the systems to be constructed during the next approximately four months should be required to modify their equipment to comply with the frequency tolerance, emission mask and ERP rules. It should be fairly clear that the answer should be no because neither the nonmultilateration provider or user should have to pay for making modifications to an approved system. Any other result may put at risk whether the system is built at all due to either problems with funding by the purchaser or problems with developing the appropriate modifications and reducing them to practice in time to avoid forfeiture of the authorizations.

In fact, for the very reasons stated above, TI supports the recommendations: (i) that grandfathered systems be permitted to continue to operate indefinitely in accordance with prior interim rules unless there is actual harmful interference;⁵⁹ (ii) that grandfathering extend to pending applications;⁶⁰

⁵⁹ Amtech Petition, p. 5.

⁶⁰ SWBM Petition, p. 19.

and (iii) that changes to the grandfathered systems, including emission changes, be allowed.⁶¹ Expanding the grandfathering provisions by these means will assure a minimal adverse impact on those who have already committed to nonmultilateration systems, and thus avoid adding costs to the public.

VII. THE COMMISSION SHOULD RECONSIDER EQUIPMENT AUTHORIZATIONS IN AN EFFORT TO PROVIDE REASONABLE LIMITS.

Rule 90.203(b)(7) requires that transmitters imported and marketed after April 1, 1996, must obtain type-acceptance. For the reasons cited in Amtech's and Pinpoint's petitions, on behalf of nonmultilateration providers, TI supports Amtech and Pinpoint's proposals to extend the exemption for type-acceptance for equipment until 12 months after adoption of a final rule on reconsideration⁶², that radios imported or manufactured prior to that date be exempt regardless of when they are used,⁶³ and the request to clarify that LMS systems can continue to use equipment deployed prior to the type-acceptance deadline provided not marketed after the deadline.⁶⁴

VIII. THE COMMISSION SHOULD CLARIFY THAT NONMULTILATERATION LICENSEES ARE NOT REQUIRED TO OBTAIN A LICENSE FROM RAND McNALLY.

TI opposes any requirement that it obtain a license from Rand McNally.⁶⁵

Rand McNally has objected that the rules are not sufficiently explicit in requiring that use of MTA's as geographic boundaries for LMS cannot proceed

⁶¹ Pinpoint Petition, p. 17.

⁶² Amtech Petition, p. 15; Pinpoint Petition, p. 24-25.

⁶³ Pinpoint Petition, p. 24-25.

⁶⁴ Amtech Petition, p. 16-17; Pinpoint Petition, p. 24-25.

⁶⁵ Petition for Reconsideration of Rand McNally & Company, p. 4 ("Rand Petition").

without a license from Rand McNally.⁶⁶ This suggests that the Commission itself must obtain a license. Yet, Rand McNally seeks license fees from "prospective LMS licensees". The rules envision that only multilateration licenses will be MTA-based even though the set of rules regarding LMS references MTA's. Accordingly, to the extent that "FCC licensees" must obtain a license from Rand McNally, the Commission should clarify that only multilateration systems require a license from Rand McNally for their MTA-based licenses.

IX. CONCLUSION.

For all the reasons set forth above, the Commission should deny the portions of the petitions for reconsideration that attempt to modify the definition of nonmultilateration systems, that attempt to elevate Part 15 devices to a co-primary status with nonmultilateration systems by expanding the reach of testing requirements and the presumption against harmful interference, that seek to impose further delay to establish rules regarding conflicts between nonmultilateration systems and Part 15 users, that attempt to reduce available spectrum for nonmultilateration systems, and that contract the grandfathering provisions. TI further respectfully joins in requests that the Commission relax the frequency tolerance limits on nonmultilateration systems, expand the grandfathering provisions, and extend the deadlines for obtaining type-acceptance. Lastly, TI respectfully requests that the Commission clarify the

⁶⁶ Rand Petition, p. 4.

licensing requirements with respect to Rand McNally for nonmultilateration system licenses.

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Dated: May 24, 1995

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served on the parties and individuals identified on the attached service list by first-class mail, postage pre-paid, on this the 24th day of May, 1995.


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